IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE TWENTY FIRST DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION NO : 3042 of 2005

Between:

M.A. Razaak, S/o Gulam Moinuddin,
R/o 8-2-100, Darushifha Colony, Near Government Hospital, Nalgonda,
Nalgonda District.

..... PETITIONER

AND

1 The Regional Manager, APSRTC, Nalgonda Region, Nalgonda District.
2 The Depot Manager, APSRTC, Nalgonda Region, Nalgonda District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue Writ order or direction or writ more particular one in the nature of Writ of Mandamus declaring the action of the respondents in not paying the gratuity amount for the out of service period including the period from the date of his initial appointment ie., 7-5-70 to till the date of his retirement ie., 30-4-2003 is illegal, arbitrary and unjust an consequently direct the respondents to pay the difference of gratuity amount to the petitioner w.e.f. 6-9-80 to 26-10-96 along with other consequential benefits and pass such other order or orders as this Hon'ble Court may deem fit and proper under the circumstances of the case.

Counsel for the Petitioner: MR.G.RAVI MOHAN

Counsel for the Respondent No.: MR.V.T.M.PRASAD

The Court, at the admission stage, made the following O R D E R:

The petitioner joined the services of the respondent-Corporation as driver on regular basis on 07.05.1970. He was removed from service by the 2nd respondent on 06.08.1990. Aggrieved by the same, the petitioner raised an I.D.No.541 of 1992 before the Labour Court-III, Hyderabad, wherein the order of removal from service was set aside and directed the respondent-Corporation to reinstate the petitioner into service with the continuity of service and notional benefits but without backwages by award dated 08.09.1993. The said award has become final, as the same is not questioned. As per the award, he was reinstated into service on 26.10.1996. After reaching the age of the superannuation, he retired from service on 30.04.2003 by the 2nd respondent. Thereupon, the writ petitioner requested the 2nd respondent to pay all the service benefits including the gratuity. The 2nd respondent has arranged to pay a sum of Rs.35,550/- ignoring the date of reinstatement to the date of retirement i.e., from 09.08.1980 to 25.10.1996. Hence, the present writ petition is filed.

The learned Counsel for the petitioner contended that the award of the Labour Court-III, Hyderabad is very clear that the writ petitioner is entitled for notional benefits and, therefore, seeks for appropriate directions.

The learned Standing Counsel for the respondents' Corporation opposed the application.

The writ petitioner was removed from service on 06.08.1990. Therefore, he raised Industrial Dispute before the Tribunal. The Tribunal by an award dated 08.09.1993 directed the respondent therein to reinstate the petitioner into service with continuity of service and with notional benefits and denied the backwages. In similar circumstances, this Court referred to a decision reported in *M.RAMA RAO v. ASST. TRAFFIC MANAGER, APSRTC, HYDERABAD* wherein it was held that:

> “ In the result, I dispose of the writ petition directing the respondents to compute the gratuity payable to the petitioner taking into account the out of employment period i.e., between 22-04-1967 and 26-06-1985 into account and after so computing to pay the balance of gratuity to the petitioner within a period of two months from the date of receipt of a copy of this order.”

Since the Labour Court granted continuity of service, it should be held that for all practical purposes the petitioner should be deemed to have been in continuous service all through. If that is so, there is no justification to exclude the date of removal i.e., from 09.08.1980 to 25.10.1996 for the purpose of computation of the gratuity payable to the petitioner.

In the result, the writ petition is disposed of directing the respondents to compute the gratuity payable to the petitioner taking the out of employment period between 06.09.1980 to 26.10.1996 and also the service which he rendered prior to his removal into account and after so computing, to pay the balance of gratuity to the petitioner within a period of two months from the date of receipt of a copy of this order. In the circumstances, no costs.

February 21, 2005

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To

1. The Regional Manager, APSRTC, Nalgonda Region, Nalgonda District.
2. The Depot Manager, APSRTC, Nalgonda Region, Nalgonda District.
3. Two CD copies

*Form-NIC-OGS/WP{**AVLR**}*